

Message Text

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TO USDOC WASHDC

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E.O. 11652: N/A

TAGS: BDIS, NI

SUBJECT: TRADE COMPLAINT: MITCHELL HOUSING VS. ARK URBAN

REF: USDOC WASHDC 14667

SUMMARY: MONTGOMERY CALLED ON EMBASSY AND MADE COUNTERCHARGES AGAINST MITCHELL, SAID CONTRACT PROVIDES FOR ARBITRATION OF DISPUTES AND THAT ARK HAS NEW PROPOSAL PENDING BEFORE MITCHELL. HE DECLINED ANSWER USDOC QUESTIONS. IN EMBASSY VIEW ONLY COURTS CAN RESOLVE DISPUTE; THERE LITTLE MORE EMBASSY CAN DO. END SUMMARY

1. IN RESPONSE EMBOFF MESSAGE OF OCT. 3, ULYSSES J. MONTGOMERY OF ARK URBAN SYSTEMS VISITED EMBASSY MORNING OCT. 8, FIRST BUSINESS DAY AFTER RAMADAN HOLIDAYS. HE INITIALLY STATED DISPUTE NONE OF USG BUSINESS BUT THEREAFTER WAS REASONABLY COOPERATIVE, FRIENDLY AND INFORMATIVE EXCEPT THAT HE DECLINED ANSWER QUESTIONS PARA 4 USDOC 14667 ON GROUNDS QUESTIONS NONE OF USG BUSINESS AND SEEMED PARTIAL TO MITCHELL SIDE OF STORY.

2. MONTGOMERY ALLEGED THAT MITCHELL HAS DONE FOLLOWING:

- (A) ATTEMPTED TO PERSUADE FHA REPLACE ARK URBAN WITH MITCHELL HOUSING;
- (B) ATTEMPTED TO PERSUADE ARK URBAN'S NIGERIAN ASSOCIATES TO DROP ARK URBAN AND ASSOCIATE WITH MITCHELL HOUSING;
- (C) USED PRIVILEGE INFORMATION OBTAINED AS CONSULTANT FOR

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OWN AGGRANDIZEMENT;

(D) APPARENTLY PADDED BILLS CLAIMED FROM ARK URBAN AND IN LETTERS TO USG AND OTHERS HAS EXAGGERATED MITCHELL INPUT TO DATE;

(E) APPARENTLY HAS INCURRED EXCESSIVE EXPENSES BY OVER-STAFFING WITH 18 TECHNICIANS, CONTRARY CONTRACT PROVISION GIVING ARK URBAN RIGHT TO REQUEST AND APPROVE STAFF.

3. THESE ALLEGATIONS MADE ORALLY AND INFORMALLY, NOT RPT NOT IN WRITING OR SWORN TO.

4. IN RESPONSE MITCHELL'S SPECIFIC CLAIMS PARA 3, USDOC 14667, MONTGOMERY SAID:

A) BAD CHECK FOR 100,000 NAIRA: MITCHELL ASKED MONTGOMERY FOR POST-DATED CHECK TO PAY TO NIGERIAN COMPANY MITCHELL WISHED TO ESTABLISH. SINCE THIS INVOLVED FHA MONEY, MONTGOMERY EXPRESSED DOUBTS BUT GAVE MITCHELL POST-DATED PERSONAL CHECK DATED JULY 15. UPON CHECKING WITH FHA, MONTGOMERY LEARNED THIS WOULD CONSTITUTE MISUSE OF FHA FUNDS SO WITHDREW CHECK. HIS POINT HERE IS THAT MITCHELL KNEW CHECK MIGHT NOT BE VALID AND SHOULD NOT HAVE BORROWED AGAINST IT. MITCHELL FREE TO SUE.

B) 150,000 DOLLAR LETTER OF CREDIT: THIS ISSUED FOR ITEMS MITCHELL WOULD EITHER SUPPLY OR PROCURE AND SHIP AND CANCELLED ON ADVISE OF BANK OF AMERICA, LAGOS, WHICH FEARED FMG WOULD NOT AUTHORIZE FUNDS TRANSFER (I.E., THEREFORE NOT FRADULENT).

5. DESPITE ALL THIS, MONTGOMERY SAID, ARK URBAN HAS ALREADY PAID MITCHELL 350,000 DOLLARS AND, THROUGH GERALD JOHNSON OF ARTHUR D. LITTLE, HAS PROPOSED ADDITIONAL PAYMENT OF 150,000 DOLLARS CONDITIONAL ON FOLLOWING FROM MITCHELL HOUSING: A) RETRACTION DER LUTORY ALLEGATIONS, B) SUPPORT TO ARK URBAN FOR TECHNOLOGY SERVICES CONTRACTED FOR, C) PROVISION OF MITCHELL TECHNICIANS TO DEMONSTRATE SYSTEMS AND TRAIN ARK STAFF IN NIGERIA UNDER ARK'S EMPLOYEE QUOTA AND ARK DIRECTION, D) PROVISION OF MITCHELL MANUALS AND INSTRUCTIONS FOR USE OF MITCHELL TECHNOLOGY. MONTGOMERY UNDERSTANDS THROUGH JOHNSON THAT MITCHELL AGREEABLE IN PRINCIPLE BUT WANTS PAYMENT IN ADVANCE WHILE MONTGOMERY WANTS PAY UPON DELIVERY. HOWEVER, MONTGOMERY EXPECTS TRANSFER LIMITED OFFICIAL USE

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FUNDS WITHIN TWO WEEKS AND WILL GO TO US OR SEND REPRESENTATIVE TO CONCLUDE AGREEMENT WITH MITCHELL.

6. MONTGOMERY SAID HE NOT NECESSARILY REJECTING MITCHELL BILLS BUT SAID THEY SUBJECT TO AUDIT BY ARK AND FHA BEFORE PAYMENT. HE ADDED THAT MITCHELL ONLY ONE OF SEVERAL ARK CREDITORS. BASICALLY, HE CONCLUDED, DISAGREEMENT WITH MITCHELL IS A CONTRACT DISPUTE WHICH PARTIES SHOULD SIT

DOWN AND RESOLVE UNDER CONTRACT TERMS, WHICH PROVIDE FOR ARBITRATION OF DISPUTES. HE ADDED THAT FHA HERE, SPECIFICALLY THE ROMANIAN CONSULTANT, SATISFIED WITH ARK'S SIDE OF STORY.

7. COMMENT: OBVIOUSLY, DETERMINATION OF WHICH SIDE RIGHT WOULD BE PROTRACTED EFFORT WHICH ONLY A COURT COULD ACCOMPLISH. PROBLEM COMPLICATED BY APPARENT LACK DIRECT COMMUNICATION BETWEEN MITCHELL AND MONTGOMERY. MITCHELL SHOULD BE ADVISED THAT MONTGOMERY FEELS HE HAS GRIEVANCES AGAINST MITCHELL. EMBASSY FEELS THE TWO PARTIES SHOULD SIT DOWN, POSSIBLY WITH LAWYERS, AND WORK THINGS OUT OR GO TO COURT. SINCE DISPUTE INVOLVES TWO AMERICANS AND SOME IF NOT ALL CONTRACTS SIGNED IN US, AMERICAN COURT WOULD SEEM BEST VENUE FOR MITCHELL. LAGOS COURT CASE AND ATTENDANT PUBLICITY PROBABLY NOT IN BEST INTERESTS EITHER PARTY.
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